

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

RECEIVED
JUDGE, CLERK OF COURT, DISTRICT OF SOUTH CAROLINA

2012 JUN 13 P 1:26

Alonzo Marcus Felton, #301080,

Plaintiff,

v.


South Carolina Department of
Corrections Division of Classification

Defendants.

Civil Action No. 8:12-1290-SB

ORDER

This matter is before the Court upon the Plaintiff's pro se complaint filed pursuant to 42 U.S.C. § 1983. In his complaint, the Plaintiff, who is incarcerated at the Kershaw Correctional Institution, alleges that the South Carolina Department of Corrections ("SCDC") Division of Classification erred by not giving him credit for four years of time he previously served. In his complaint, the Plaintiff does not request any relief.



On May 31, 2012, United States Magistrate Judge Jacquelyn D. Austin issued a report and recommendation ("R&R") in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), recommending that the Court summarily dismiss the Plaintiff's case without prejudice. First, the Magistrate Judge noted that—to the extent the Plaintiff intends for this to be an action pursuant to 42 U.S.C. § 1983—the Plaintiff has failed to allege the violation of his constitutional or federal rights by a "person" acting under the color of state law because the South Carolina Department of Corrections Division of Classification does not qualify as "person" pursuant to section 1983. Next, the Magistrate Judge determined that the Plaintiff's failure to request any relief fails to comply with even liberal pleading requirements. The Magistrate Judge also noted that the SCDC is a department of the State and that it is entitled to Eleventh Amendment immunity. Finally,

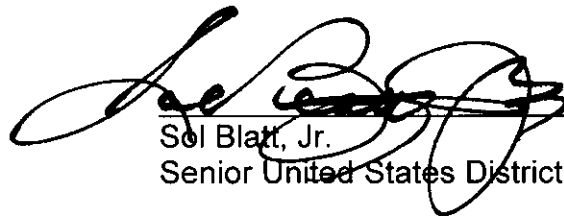
the Magistrate Judge determined that—to the extent the Plaintiff intends for this action to be a petition for a writ of habeas corpus—the action is repetitive to another action filed by the Plaintiff.

The Plaintiff filed objections to the R&R, stating that “all [he is] requesting is that SCDC comply with the judgment Judge Thomas Russo signed off on the sentencing sheet, on February 10, 2008, for the 4 years of credit to be taken off this ten year sentence.” (Entry 13 at 1.) In his objections, the Plaintiff does not point to any legal or factual error in the R&R, and he does not allege the violation of a Constitutional right by a “person” acting under color of state law. Ultimately, after review, the Court finds the Plaintiff’s objections to be without merit. Moreover, the Court finds that the Magistrate Judge correctly summarized the facts and applied the correct legal standard. Therefore, the Court agrees with the Magistrate Judge that dismissal of the Plaintiff’s complaint, without prejudice, is appropriate under the circumstances.

Based on the foregoing, it is hereby

ORDERED that the R&R (Entry 10) is adopted and incorporated herein; the Plaintiff’s objections (Entry 13) are overruled; and the Plaintiff’s complaint is dismissed without prejudice for failure to state a claim.

IT IS SO ORDERED.


Sol Blatt, Jr.
Senior United States District Judge

June 12, 2012
Charleston, South Carolina